IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Application No.189 of 2007
In
Second Appeal No.761 of 2006

Shashikant Mahadev Shirke & anr. Applicants
Vs.
Saraswati Keshav Sawant & ors. Respondents

Mr.N.N.Gavankar with Mr.Arfan Sait for applicants.
Mr.Amit Borkar for respondents

CORAM: B.H.MARLAPALLE, J.

April 11, 2007.

P.C.

. Heard Mr.Gavankar, the learned counsel for the applicants - original plaintiffs. The lower Appellate Court was pleased to decree their suit by its judgment and order dated 3/12/2005 and it has been held that the plaintiffs have 1/6th share in the suit properties and that they are entitled to partition and possession of the said share. This decree has been challenged by both the parties in Second Appeals which have been admitted by this Court i.e. Second Appeal No.128 of 2006 and Second Appeal No.761 of 2006. The applicants have filed Second Appeal No.761 of 2006 and prayed in this application that the respondents be directed to remit the auction sale amount of mango fruits in every season during the pendency of the appeal.

. It has been pointed out in the Civil Application itself that during the pendency of Special Civil Suit No.74 of 1994 as well as Civil Appeal No.69 of 2004 the respondents were depositing such amount, for example on 3/4/2005 an amount of Rs.4,55,000/- has been deposited in Civil Appeal No.69 of 2004 towards the auction sale of the mango fruits. It is further claimed that during last mango season of 2006 no such directions were issued and the second appeals were waiting for admission.

. Mr.Borkar, the learned counsel for the respondents while opposing this application submitted that when the prayer of the applicants while admitting Second Appeal No.761 of 2006 was specifically rejected for stay, now this application could not be entertained. He further submitted that there was no case made out to grant such a prayer and the applicants themselves did not disclose as to under what provisions this application has been filed. The facts remains that the respondents are in possession of the suit property consisting of about 150 mango trees and every year from March 2000 onwards till April 2005 they have gone on depositing

certain amount arising from the sale proceeds of the mangoes.

. Hence it is directed that the mangoes on the trees located in the subject land shall be sold by auction and the auction sale amount shall be deposited with the trial Court as and when such sale takes place during the pendency of the second appeals. It is further directed that while depositing the said amount the respondents shall furnish the account and a copy thereof will be handed over to the learned advocate representing the applicants from time to time.

. The application is allowed accordingly.

. Oral application for stay of this order is hereby rejected.

(B.H.MARL